

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKETS UE-121697
	)	and UG-121705 (<i>consolidated</i>)
PUGET SOUND ENERGY, INC. and)	
NW ENERGY COALITION)	
	)	ORDER 04
For an Order Authorizing PSE to)	
Implement Electric and Natural Gas)	
Decoupling Mechanisms and to Record	)	GRANTING LATE-FILED PETITION
Accounting Entries Associated with the	)	TO INTERVENE; OVERRULING
Mechanisms	)	OBJECTION TO ORDER 02
.....)	
)	
WASHINGTON UTILITIES AND	)	DOCKETS UE-130137
TRANSPORTATION COMMISSION,	)	and UG-130138 (<i>consolidated</i>)
)	
Complainant,)	
	)	ORDER 04
v.)	
)	
PUGET SOUND ENERGY, INC.,	)	GRANTING LATE-FILED PETITION
	)	TO INTERVENE; OVERRULING
Respondent.	)	OBJECTION TO ORDER 02
)	
.....)	

MEMORANDUM

1 **PROCEEDINGS.** Puget Sound Energy, Inc. (PSE), and the Northwest Energy Coalition (NWECC), collectively referred to as the “Joint Parties,” filed a petition on October 25, 2012, in Dockets UE-121697 and UG-121705 (*consolidated*), seeking approval of an electric and a natural gas decoupling mechanism and authority to record accounting entries associated with the mechanisms. After the petition and supporting testimony were filed, the Washington Utilities and Transportation Commission (Commission) held two technical conferences to allow interested stakeholders to further discuss the proposed decoupling mechanisms. PSE agreed to cooperate with interested stakeholders by responding to their inquiries seeking additional information about the decoupling proposal.

- 2 PSE and NWEAC, taking this process into account, reached agreement on certain modifications to the decoupling mechanisms and filed on March 4, 2013, an amended petition and testimony in support of these modifications to the original decoupling proposal. The Commission’s regulatory staff (Commission Staff or Staff)¹ filed testimony in support of the revised proposal on March 4, 2013.
- 3 Puget Sound Energy, Inc., filed revised tariff sheets in Dockets UE-130137 and UG-130138 (*consolidated*) on February 4, 2013, seeking to update to May 2013 its rates established in general rate proceedings in May 2012.² The filing is limited in scope and rate impact. It does not meet the criteria defining a “general rate case” in WAC 480-07-505(1). PSE refers to the filing as an Expedited Rate Filing (ERF) and the Commission accepts it as such. Its purpose is to establish baseline rates on which the Joint Parties’ decoupling mechanisms are proposed to operate during the several year term of a “rate plan” proposed by PSE, NWEAC and Staff in a stipulation filed on March 22, 2013, in these four dockets and in Docket UE-121373.³
- 4 The Commission placed Dockets UE-121697 and UG-121705 on the agenda for its regular open meeting on March 14, 2013. The Commission, following discussion, set these dockets for hearing. During the same open meeting, the Commission suspended operation of the as-filed tariffs in Dockets UE-130137 and UG-130138, effectively setting these dockets for hearing as well. The Commission, among other things,

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (*consolidated*), Order 08 (May 7, 2012).

³ The parties to this stipulation style it a “Multi-Party Settlement Agreement Re: Coal Transition PPA and Other Dockets” and refer to it as a “global settlement.” The Coal Transition PPA terminology refers to Docket UE-121373 in which the Commission’s Order 03- Final Order Granting Petition, Subject to Conditions is pending on PSE’s Petition for Reconsideration and Motion to Reopen the Record. Aside from consideration of the resolution proposed for Docket UE-121373 in PSE/NWEAC/Staff stipulation, the only remaining process prior to the Commission’s entry of a Final Order in Docket UE-121373 is for parties to file responses to PSE’s Petition for Reconsideration and Motion to Reopen the Record, now set for May 30, 2013, in coordination with the procedural schedule established in the Decoupling and ERF dockets, as discussed in Order 02 and in this Order concerning these dockets.

designated the undersigned Administrative Law Judge (ALJ) as a presiding officer in these four dockets and directed the ALJ to set an expedited schedule for discovery, any additional prefiled testimony, and hearing.⁴

- 5 The Commission, on due notice, convened a joint prehearing conference on March 22, 2013, in the Decoupling dockets, the ERF dockets and the Coal Transition PPA docket. The Commission subsequently entered Order 02-Prehearing Conference Order in this proceeding and, by separate order, in the Decoupling proceeding. In both orders, the Commission granted various petitions to intervene and established a common procedural schedule to hear the ERF and Decoupling matters, which are interrelated to the extent previously discussed.
- 6 The Commission simultaneously entered in Docket UE-121373 Order 06-Continuing the Deadline Date for Parties to File Answers to Puget Sound Energy's Petition for Reconsideration and Motion to Reopen the Record and Revised Notice of Intention to Act. Order 06 set May 30, 2013, as the date for responses to PSE's pending petition and motion, the same date established in the Decoupling and ERF dockets for parties to file post-hearing briefs. The Commission also gave notice in Order 06 of its intention to act on PSE's petition and motion by June 28, 2013.
- 7 **LATE-FILED PETITIONS FOR INTERVENTION.** On April 1, 2013, Nucor Steel Seattle, Inc. (Nucor Steel) filed its Late-Filed Petition to Intervene in Dockets UE-121697 and UG-121705.⁵ Nucor Steel states it is a major natural gas transportation customer of PSE and thus has a direct and substantial interest in the proceeding. Nucor states that "Joint Parties first proposed that decoupling apply to natural gas transportation customers when they filed their amended petition on March 1, 2013." Nucor's counsel learned of this amendment on March 12, 2013. Nucor states further that it did not participate in the joint prehearing conference on March 22, 2013, "due to administrative oversight and was thus unable to orally petition for intervention."

⁴ The undersigned ALJ also is the presiding officer assisting the Commissioners in Docket UE-121373.

⁵ Nucor Steel earlier filed a timely petition to intervene in Dockets UE-130137 and UG-130138, which was granted.

- 8 No one objected to Nucor Steel’s late-filed petition to intervene. The Commission finds that Nucor Steel demonstrates its substantial interest in this proceeding and that its participation will be in the public interest. Nucor Steel’s late-filed petition to intervene is granted.
- 9 On April 4, 2013, The Kroger Co., on behalf of its Fred Meyer Stores and Quality Food Centers divisions (collectively Kroger) filed its Amended Late-Filed Petition to Intervene in Dockets UE-130137 and UG-130138.⁶ Kroger states that it is one of PSE’s largest commercial customers operating more than 60 grocery stores in Washington that are electric customers of PSE. Kroger says that it has a substantial and vital interest in the outcome of this electric rate case that cannot be adequately represented by any other party. Kroger states administrative oversight accounts for its late filing.
- 10 No one objected to Kroger’s late-filed petition to intervene. The Commission finds that Kroger demonstrates its substantial interest in this proceeding and that its participation will be in the public interest. Kroger’s late-filed petition to intervene is granted.
- 11 **OBJECTIONS TO ORDER 02.** On April 2, 2013, the Public Counsel Section of the Washington Office of Attorney General (Public Counsel) filed its objections to Order 02 in both the ERF and the Decoupling dockets. Public Counsel states that it is authorized to represent support for its objection from the Federal Executive Agencies (FEA), Northwest Industrial Gas Users (NWIGU), and Nucor Steel. The Industrial Customers of Northwest Utilities (ICNU) filed a response to Public Counsel’s objection, stating its support.
- 12 Public Counsel argues that the procedural schedule adopted in Order 02 does not give parties a fair opportunity to evaluate the decoupling and ERF proposals and prepare recommendations for the Commission. Public Counsel says this will result in the adjudicative proceeding having “limited value.” Public Counsel renews its request, made in a joint letter filing with NWIGU on March 12, 2013, and discussed during the March 22, 2013 prehearing conference, that the Commission adopt a schedule that “will provide additional time of approximately 60 days to the schedule adopted, with

⁶ Kroger earlier filed a timely petition to intervene in Dockets UE-121697 and UG-121705, which was granted.

the case completed by September.”⁷ Citing “significant new policy and procedural proposals” and “[substantial] financial impact,” Public Counsel represents that the current procedural schedule does not provide sufficient time for discovery and issue analysis beyond a “preliminary” level.

- 13 Public Counsel focuses on the revised decoupling proposal filed by PSE and NWECC on March 4, 2013, and the conversion of these dockets to the status of formal adjudicative proceedings on March 14, 2013, in support of its argument that the parties will not be afforded adequate opportunities to explore the policy issues and practical implications of the Decoupling and ERF proposals. Public Counsel argues:

Both the ERF and Decoupling dockets have been subject to procedural uncertainty. No discovery rules or protective orders were in place and the process and schedule for consideration of the dockets was unclear. Much of the material to which parties must respond, including testimony, exhibits, and a Staff/PSE/NWECC settlement agreement, has only been filed within the last 30 days.

These arguments fail to take into account the broader context and history in which the policy issues under consideration in the Decoupling and ERF dockets have developed. The context includes multiple proceedings over many years and significant attention during recent periods. In November 2010, following extended discussions with stakeholders, including Public Counsel and other parties to these proceedings, the Commission issued its *Decoupling Policy Statement on Regulatory Mechanisms, Including Decoupling, to Encourage Utilities to Meet or Exceed Their Conservation Targets* (Decoupling Policy Statement).⁸ The Commission’s issuance of the Decoupling Policy Statement “was a milestone in what NWECC’s witness, Mr. Cavanagh, described during our evidentiary hearing as ‘a 30-year conversation with this Commission’ on the subject.”⁹ Order 08, the Commission’s Final Order in PSE’s most recently completed general rate case (GRC) discusses in detail the Commission’s focus on full decoupling and similar mechanisms in the context of

⁷ Given that the procedural schedule established in Order 02 calls for post-hearing briefs on May 30, 2013, Public Counsel’s “approximately 60 days” seems significantly understated.

⁸ UTC Docket U-100522, Investigation Into Energy Conservation Incentives, *Report and Policy Statement on Regulatory Mechanisms, Including Decoupling, To Encourage Utilities To Meet or Exceed Their Conservation Targets* (November 4, 2010).

⁹ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (consolidated) Order 08, ¶438 (May 7, 2012)(citing Cavanagh, TR. 428:11-12).

PSE's GRC, completed in May 2012, and in Avista Utilities' 2011 GRC.¹⁰ In both cases, the Commission sought out the perspectives of multiple stakeholders on the subject of decoupling as a policy and on the question of how it might be effectively implemented.

- 14 Discussions, informal discovery, and Commission-sponsored technical conferences have continued in connection with the pending PSE/NWEC petition for decoupling in Dockets UE-121697 and UG-121705 since October 2012. While the proposal currently before the Commission was filed recently, and includes revised approaches to certain components of the mechanism, much remains the same as in the original proposal. Fundamentally, the parties have been actively engaged in this matter for nearly six months already.
- 15 The concept of an expedited rate proceeding along the lines of PSE's ERF filing in Dockets UE-130137 and UG-130138 also had its genesis in Order 08,¹¹ though the Commission's broader policy allowing for such filings can be traced back considerably further.¹² In Order 08, the Commission discussed at length the evidence Staff presented outlining an expedited form of general rate relief using a simple and straight-forward process to update the test period relationships between rate base and net operating income. Staff proposed that the process would use the type of financial information required by Commission basis reports.
- 16 In Order 08, the Commission encouraged PSE to accept "Staff's invitation 'to meet with PSE to confirm mutual expectations' for a filing along the lines Staff suggests."¹³ Order 08 also encouraged a broader dialogue on this issue:

¹⁰ See *WUTC v. Avista Utilities*, Dockets UE-110876 and UG-110877, Order 06 (December 16, 2011).

¹¹ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (*consolidated*) Order 08, ¶¶ 492-507 (May 7, 2012).

¹² See, e.g., *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-011570 and UG-011571 (*consolidated*), Order 12, ¶¶ 22-30 (June 20, 2002)(discussing Power Cost Only Rate Review process, approved in Order 12). See also *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-011570 and UG-011571 (*consolidated*), Order 09 (March 28, 2002)(Commission approval of interim rate relief on a record developed in approximately 3 month period following first prehearing conference and deemed adequate to support \$25 million rate increase).

¹³ *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-111048 and UG-111049 (*consolidated*) Order 08, ¶ 507 (May 7, 2012).

Alternatively, Staff and PSE may enter into a broader discussion with other interested participants in the regulatory process and bring forward for consideration specific proposals that may satisfy a range of both common and diverse interests. In this connection, the Commission would be particularly interested in proposals that might break the current pattern of almost continuous rate cases.¹⁴

Finally, the Commission said that PSE could make such a filing on its own initiative and the Commission would give it fair consideration.

- 17 PSE, Staff and other stakeholders did, in fact, hold some discussions concerning the possibility of an expedited rate filing following the completion of Dockets UE-111048 and UG-111049, but Staff's proposal made in that proceeding was not pursued and no expedited rate filing for the purpose envisioned by Staff's witness followed. Nor did these discussions lead to agreement, or even a consensus, concerning what exactly an expedited rate filing should include, how it should be handled procedurally or what purpose(s) it might serve. PSE ultimately took the route of filing the pending ERF on its own initiative. While PSE would have the ERF serve a different purpose than what Staff proposed in the 2012 GRC dockets, PSE's filing follows at least some of the principles Staff outlined in that GRC proceeding as being appropriate for such a filing (*e.g.*, restating adjustments only, no cost of capital issues, no rate spread or rate design issues). As a matter of policy, then, and to a significant extent as an implementation issue, the pending ERF cannot be considered novel.
- 18 PSE, NWECA and Staff have urged strongly that the Commission resolve these dockets with less, rather than more process, and earlier (*i.e.*, by April 2013) rather than later. The Commission determined that it should allow for more formal process and set these matters for hearing. This also meant a somewhat longer schedule, including reasonable opportunities for formal discovery in addition to what has occurred informally¹⁵, prefiled testimony by Public Counsel and intervenors, evidentiary and public comment hearings and briefing. It is important, however that the Commission

¹⁴ *Id.*

¹⁵ Public Counsel's specific objection to the discovery cut-off date is misplaced. The schedule gives parties 19 days to propound data requests. This should be ample time given the limited scope of these proceedings relative to, for example, a general rate case. As discussed during the prehearing conference on March 22, 2013, parties may seek additional opportunities for discovery and such opportunities can be provided, if shown to be necessary to the development of a complete record.

not prolong the process to the point that the goals of expedited process are lost entirely.

- 19 The schedule adopted in Order 02 strikes a balance between PSE's proposal to conclude these proceedings by the end of April and Public Counsel's proposal that would extend the schedule into September. The Commission anticipates entering its final order, or orders, sometime in June. The Commission recognizes that while this schedule is workable and does not cause prejudice to any party, all parties will be required to exhibit cooperation and diligent effort to ensure that a full and adequate record is developed. We trust that effort is underway. We determine accordingly that Public Counsel's objection should be overruled.

ORDER

THE COMMISSION ORDERS THAT:

- 20 (1) Nucor Steel's late-filed petition to intervene in Dockets UE-121697 and UG-121705 is GRANTED.
- 21 (2) Kroger's late-filed petition to intervene in Dockets UE-130137 and UG-130138 is GRANTED.
- 22 (3) Public Counsel's objection to Order 02 is OVERRULED. The procedural schedule in these dockets remains as established in Order 02.

Dated at Olympia, Washington, and effective April 10, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge